App F IX-4

*Previous References* Nil 1945-46 Nil

File No 149-US

Serial Nos 69, 70

*Later References*

# GENERAL AND REVENUE SECRETARIAT

*Serial Nos* two

Part B for Appeals

SUBJECT

Agreement to be executed by Mr M.R. Raja-Gopal Naidu in connection with the sale of a plot of land in Wilson Garden Extension

D. 11746 dt 27-4-46

To The Chairman City Improvement Trust Bd

Mysore

Forwards for further action

HJS

HJ

3496/L

General and Revenue Secretariat | File No | of 194 | [App F III-2

| Serial No | |
|---|---|
| | Letter No 501 dated 6.11.45 dated from the Chn C.P.T. Bd B'lore forwarding for approval draft agreement to be executed by Mr M.R. Rajagopal Naidu in connection with the sale of a plot of land to him in Wilson garden extension. Subject |
| | 1) Govt Order No L 12432-9/RL 157-44-96 dated 22.6.45 sanction was accorded to the grant of a plot of land measuring 25,000 Sq. yards in the Wilson garden extension at a rate of Rs 1-8-0 per sq/yd for the establishment of a work-shop at the place, directing among others, the for getting a suitable agreement executed by the party |
| | The Chn C.P.T. Bd B'lore forwards a draft agreement for scrutiny and approval and states |

Collector not-yet-available

NOTE—Contn Sheet

3496/L

3496

File No | of 194 | General and Revenue Secretariat

Serial No

that it is said that Condition No 2 in the proposed draft is repugnant to Section 9 of the T P Act and suggests that Law Secty may be consulted on the point

If applied, this will be sent to the Law Secy accordingly for opinion on the point raised

25/1 4) The Collr (ML 157-44-98) is necessary for the disposal of the case as well as the linked one. Please trace & put up the reference. In the meanwhile, a copy of Lr No 2/12432-9/ML 157-44-98 dt 22/8/45 may be obtained from the office of the Chairman, C D A Bangalore, by writing to T P A to the Chairman

Sd/- 26/1/46

5) ML Collection - ML 157-44-98 is put up

(1) The draft agreement sent up by the Chn, contains all the conditions prescribed in the above Lrs.

2) The Chn suggests consultation with the Law

Flag A

1882 Law 34 of 6

Sectt with regard to condition No 2 viz the grantee should not alienate land for a period of ten years.

Solicitor for orders

6(4)/4/13 11/4/13 & The Law Secretary will be consulted on the point raised by the Chairman of the Aijal Improvement Trust Board, viz., if the clause 2 of the draft agreement would be repugnant to sec 10 of the Transfer of Property Act

P V.D

Perhaps 10) 2/4/13

Perhaps yes Land 4/3/13

11) 8/5/13 Advocate Genl's views 4/3/13

12) Submitted with reference to para 8 supra—

L' (3) the question for determination is whether cl (2) of the draft agreement is repugnant to S 10 of the T P Act

(4) the agreement to be executed by the Rajyapal Mandir is in connection with the sale of a plot of land, & such cl (2) forbids alienation for a period of 10 yrs.

An absolute restraint on alienation is void (ind S 10 TP Act) while a partial restraint is not ~~known to~~ the ~~kind~~ of alienation Sh is doubtful known, whether restriction for a particular time are valid

15) A similar clause (absolute restraint except with consent of grantor) arises in the ~~agreement~~ ~~deed~~ agreement relating to grant of sh to the Bombay- gomasha Sangha (ind Sch III SS - 45-) - placed before this appears to be a deed of grant and clause (3) of the deed (Ex 'A') restricting alienation and reserving ~~the~~ right to resume on use & breach of any condition, does not appear to offend of the rule against perpetuity

16) So so far as it invalidates a condition of forfeiture on alienation, such a restriction (especially in the case of sale ~~deed~~) appears to be a restrictive ~~agreement~~ to the interest transferred

17) If approved, the Advocate-General will be consulted regarding

1882/Law.

1 Draft agreement - Sale of a plot of land to — R Wards

General and Revenue Secretariat | File No | of 194 | [App F III–2

Serial No

draft agreement (fg 1'L.) & and the validity of cl (2) thereof
Subd with reference to para 8 supra

NRH 7-3 MB

18) The Advocate General may therefore be consulted

DD 7346

Lawsey)

19) DR 8/3 DD 8/3

11 6 No 20/Law DJ 3'46

Forwarded with compliments to the Advocate-General for favour of advice on the draft agreement and the points noted at para 8 supra

Yours etc

DVenkataramanayya
8/3/46 for Secy to Govt Law Dept

7500 b20/46 MB 9/3'46

NRA 8/3/46 with Compliments to the Law Secretary

No 220 HAE 25 MB 9/3-46

20) The grant is not free from doubt There is paucity of authority on the question whether restraint on alienation for a limited period offends the provisions of Sec 10 of the Transfer of Property Act

21) But the following circumstances may induce a court to give effect to the restraint & give effect to the conveyance

i) The condition is agreed to by the grantee

ii) It is based on reason & does not rest upon the caprice or whim of the grantor

iii) The period is not so long as can be construed as an attempt to ever interfere with the free disposition of property

22) The insertion of "an" additional clause becomes necessary and the grantee should also join in the execution of the document

The grantee has agreed to the above conditions because the grantor with a view to increasing the amenities available to the public of Bangalore is desirous that an automobile workshop and staff quarters should be erected on the site granted and the grantee has given such assurance and the grantor for the reasons aforesaid is granting the site at a comparatively low price"

Sgd Ethiraju Raja
A-G. 13/3/46

3190 14 MAR 1946

and business of the workshop carried on,

NOTE—Contn Sheet

1882/Law

File No 1 of 194

General and Revenue Secretariat

Serial No

Sl. Advocate-General's views above on for personal absence with reference to para 8 supra.

NKH 14.3.30

(2) The restraint is for a limited period. Such conditions are usually imposed when leaves are granted to members of depressed classes (vide pages 119 & 120 of the Revenue manual Vol I) and to subordinate personnel (vide G.O. No. G. 5292-348 Judg 53-30-2 dated 17-11-30);

A mutchalka cannot be taken from the guarantee and he cannot possibly quarantine the guarantee under conditions proposed

for 15/3

Land Secy)

(3) Conditions restricting alienation for a time are held to be invalid according to the provisions of Sec 10 of the T.P. Act (Cf 1867 I.R. 2 P.C. 4 & Jarman 7th Ed. 537). The introduction of an additional clause as proposed by the Advocate General is necessary in case of mutchalkas such as the one suggested as the annuity of grants to depressed classes & subordinate personnel may be taken to secure the fulfilment of the conditions of the grant. Such a mutchalka might also be made subject

General and Revenue Secretariat | File No 1882 Law of 194 | 3476 | [App F III-2

| Serial No | |
|---|---|
| | The scope of the restrictions on alienation for a period, among other things for which property the- |
| | Rev Secy w/c 8/2/3 |
| 2210 2/12 | |
| | 2/3 Law 28/3 |
| | Subd:- |
| | It is the Law Secy's opinion that though the conditions restraining alienation for a time are held to be invalid according to provisions of Section 10 of the T P Act, yet such conditions are usually imposed when lands are granted to members of the Depressed class and to the Military personnel |
| | It is agreeable with the opinion of the Advocate General, for the introduction of an additional clause in the agreement in the grants mentioned by the Advocate general in Para 2 Supra |
| | If Subd for orders with refce to para 9 Supra |
| | 2/3 6/4 If Pl put up draft reply accede into the opinion of the Law Secretary above |
| | 8/4/14 |

NOTE—Contn Sheet

3486

File No | of 194 | General and Revenue Secretariat

Serial No

Sealed with a draft letter accordingly.

22/4 (1) The draft letter to the Chairman, Istme ctf: Improvement Trust Board conveys the views of the Law Advr. & to advocate the course above & may be approved

Received in Registry 17/4/46

Date 17.4.46 No 6423

17-4-46

Minister for Edn & PW) Law 17/4

17/4/46

20/4/46

Law 22/4/46

Issue

TYPING SECTION

Secretariat

L 11746 dtd 27.4.46.

Fdg draft agreement for Govt's action

B

26/6

GOVERNMENT OF MYSORE

OFFICE OF The Chairman, City Improvement Trust Board, Bangalore.

3496

Date 15th November 1945

The Secretary to Government,
Revenue Department, Bangalore

Sir

RC 149-45-69

Agreement to be executed by Mr M R Rajagopal Naidu in connection with the sale of a plot of land in Wilson Garden Extension.

---

I have the honour to state that as per G O No L-12432-9-Ml-157-44-98 dated 22-6-1945 an agreement in an appropriate and legally valid form embodying the conditions imposed therein has to be executed by the firm A draft of the agreement incorporating the conditions imposed in the G O is sent herewith for favour of scrutiny and approval In this connection it has been pointed out by some members of the Legal profession that condition 2 in the proposed draft is repugnant to Section 10 of the Transfer of property Act It is suggested that this point may be kindly got examined in the Law Secretariat before approval is conveyed to the draft

I have the honour to be,
Sir,
Your most obedient servant,

Chairman,
C I Trust Board

MR/15-11

Draft Form

Whereas the Bangalore City Improvement Trust Board Bangalore has granted a building site described as No in the schedule to for the purpose of building an automobile workshop and staff quarters thereon and whereas the said has paid a sum of Rs as price for the whole of the said plot of land described in the appended schedule No I, the Chairman of the Bangalore City Improvement Trust Board on behalf of the said Board and under authority vested in the said Board by Act V of 1945 do hereby grant and confirm the said plot of land to the said subject to the following conditions

1 The Buildings should be completed within two years from the date of grant

2 The land should not be alienated for a period of 10 years

3 The buildings should be constructed according to the plan approved by the Government Architect

4. Failure to fulfil the above conditions will entail resumption of the land with the buildings thereon

5 Additional clause. (Refer the Zonal draft)

(Portion marked [ ] ----

Chairman,
C I Trust. Board

MR/15-11.

L

Appendix F G—1]

SUBJECT Validity of Condition no 2 in the Agreement to be executed by Mr. I R Trajagopal Naidu in connection with the sale of a plot of land Cochin in Wilson garden extension.

Section Pol

File No 149-45

Serial No 70

*Diary No of letter replied to* 3496/L

No L 11746 ~~Pol 1490~~ GS-70

General and Revenue Secretariat

( )

the 194

To The Chr. C I T Bd Bldg

Sir

Date of issue 27 4 46

Signed by Hy 4 RR

With refce to your letter no 501 dated 16.11.45 on the above subject I am directed to state that though Cond. restraining alienation for a time are held to be invalid according to provisions of sec 10 of the T P Act, yet such Conditions are usually imposed when lands are granted to the members of the Depressed Classes and to the Military personnel

List of enclosures

Copied by

Examined by

In order to avoid complications in future

it is found necessary that the grantee should also join in the execution of the document. This could be done by adding one more clause to the proposed agreement ~~and that clause~~ as follows:—

[ "The grantee has agreed to the above conditions because the grantor with a view to increasing the amenities available to the public of Poole is desirous that an automobile workshop and staff quarters should be erected and the business of the workshop carried on, on the site granted and the grantee has given such assurance and the grantor for the reasons aforesaid is granting the site at a comparatively low price." ]

The draft agreement embodying the above additional clause is approved.

The draft agreement is returned herewith

J Lancaster
Nov 17/4
for Asst Secy
17/11/4

C F No 54]

**GOVERNMENT OF MYSORE** 3496V 7958

Tele gram / phone

No 1732
Encls

OFFICE OF

The City Improvement Trust Board,
'Ranga Vilas'
Seshadri Road, BangaloreCity

Date 6th May 1946

To

xx~~ENDORSEMENT~~

J B Mallaradhya, Esq , M A ,
Secretary to the Government of Mysore,
Revenue Department, Bangalore

Sir,

Subject - Validity of condition No 2 in the agreement to be executed by Mr M R Rajagopala Naidu in connection with the sale of a plot of land to him in Wilson Garden Extension

---

With reference to your letter No L 11746/M1 149-45-70 dated 27-4-46 on the above subject, I have the honour to state that the Draft agreement said to have been returned therewith is not received in this office I therefore request that the same may kindly be caused to be returned early

I have the honour to be,
Sir,
Your most obedient servant,

CHAIRMAN,
C I Trust Board

L 12660 dt 14.5.46

To the Chairman,
C I T B,
Bangalore

Sir

As required in your letter no 1732 dt 6.5.1946, I am herewith forwarding two copies of the revised draft agreement to be executed by Mrs. M.R. Rajagopala Naidu in connection with the sale of a plot of land to them in Wilson Gardens extension.

Yours faithfully
for Chairman

HH/15